Supreme Court, U.S.
FILED
JAN 19 1994
OFFICE OF THE CLERK

(3)

No. 93-903

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

THE ANSCHUTZ CORPORATION,
Petitioner,
v.
AMOCO ROCMOUNT COMPANY and
UNION PACIFIC RESOURCES COMPANY,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER[1]

The Brief in Opposition demonstrates that there is at the very least a split between the Seventh Circuit and the other Circuits on the proper test to be used to determine the principal place of business in every diversity case involving a corporation (*see* Opp. at 5, 13, 15, 18).[2] The

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[1] Petitioner's Rule 29.1 statement appears at Pet. at ii.

[2] The place to look for the Seventh Circuit's view of the "nerve center" test is not in the Fifth Circuit, or in the district courts of California and New York (*see* Opp. at 16-18), but in the Seventh Circuit itself, from such cases as *Wisconsin Knife Works* v. *National Metal Crafters*, 781 F.2d 1280 (7th Cir. 1986). Moreover, Rocmount is not analogous to the defendant in *Lurie Co.* v. *Loew's San Francisco Hotel Corp.*, 315 F. Supp. 405 (N.D. Cal. 1970), whose "nerve center" was in New York and primary asset in California. Rocmount's assets were in two states, and even under the

split, however, is much more serious and diverse than this. The decisions cited in the Petition confirm that the differing approaches are not simply a matter of "nomenclature," as Respondents suggest (*id.* at 14 n.10), but rather ones that produce different results.

Respondents demonstrate this themselves. They claim that application of the "nerve center" test would place Rocmount's locus not in Utah or Wyoming, where the "center of corporate activity" test placed it, but in Illinois (*id.* at 5, 7 n.6, 10, 11 including n.8 (three times), 12 (six times), 13, 17, 21). Of course, that assertion alone demonstrates the confusion in this area of the law, because if it were true, a corporation's principal place of business could be in a state in which it is not even licensed to do business. Respondents do not, and could not, dispute that Rocmount was never licensed to operate in Illinois, and yet they fail even to mention this highly significant fact. The Court of Appeals certainly recognized its significance, which is why it did *not* find Rocmount's locus in Illinois but instead located it in either Utah or Wyoming.

But just as importantly, Respondents' argument about Illinois shows that different results ensue when different tests are applied. If it were true that Illinois was the principal place of business under the "nerve center" test and another state under another test, that totally belies Respondents' contention that the differences among the Circuits are no more than a matter of semantics.

The fact is that the "nerve center" test squarely places Rocmount in Colorado for all the reasons spelled out in the Petition.[3]

"total activity" test, a court must look to the "nerve center" when the assets are not all in one jurisdiction.

[3] Respondents refer to Petitioner's "confusion" between Rocmount and Production (Opp. at 13). Petitioner was not confused. As demonstrated in the Petition, the relationship between the two was

The cases that Respondents rely on for the proposition that there is no real split in the Circuits because their differences are more a matter of "nomenclature" than substance belie the argument. For example, Respondents argue that the tests in the Third Circuit, represented by *Kelly* v. *United States Steel Corp.*, 284 F.2d 850 (3d Cir. 1960), and the Fifth Circuit, represented by *J.A. Olson Co.* v. *City of Winona*, 818 F.2d 401 (5th Cir. 1987), are indistinguishable (Opp. at 15-16). But the tests applied in these Circuits will lead to different results in numerous cases. *Kelly* focuses the inquiry on a determination of the "headquarters of day-to-day corporate activity and management," with much less importance given to factors like the location of personnel and plants. 284 F.2d at 854. Thus, a corporation with a plant in one state and management headquarters in another state would have its principal place of business in the latter. *J.A. Olson*, however, establishes that "when a corporation has its sole operation in one state and executive offices in another, the place of activity is regarded as more significant." 818 F.2d at 411. The same corporation described above would have its principal place of business in the state with the plant under *J.A. Olson*. The split among the Circuits is clear.

Respondents' response to virtually every argument in the Petition is that the federal courts must have "flexibility" in approaching the principal place of business issue (*see* Opp. at 3, 4, 5 n.4, 15 (four times), 20 (three times), 21). Respondents in no way explain how this flexibility can be reconciled with Congress's direction that the federal courts determine in each diversity case involving a corporation "the" principal place of business in which that corporation is located. In fact, one searches

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established in two documents which they both signed—and which specifically provided that the law governing the relationship would be that of the State of Colorado. Respondents refer to only one of these documents, in their Statement of the Case, but never discuss the significance of either of them.

the Brief in Opposition in vain for *any* discussion of the statutory language or its history. It is precisely because of the "flexibility" that has evolved among the Circuits that a total disparity in approaches toward this issue has arisen—a disparity which, as Respondents concede (Opp. at 14), this Court has never directly addressed.

While contending that these various disparities can somehow be reconciled, Respondents at the same time concede that "the circuits have crafted different 'tests' to apply to principal place of business analysis, depending upon the corporate structure involved" (*id.* at 16).[4] Indeed they have. And if the controlling statute should be interpreted to allow such disparities, this Court should say so, because nothing in the plain language of the statute or in its legislative history warrants such a conclusion, as demonstrated by the Petition. In fact, nothing in the statute indicates that different tests apply to different corporations, or that if a corporation has a structure that is "simple" or "uncomplicated" (*see id.* at i, 4, 21), as opposed to one with activities that are "widespread" or "far-flung and varied" (*see id.* at 8, 16, 18), one set of criteria rather than another applies, or that in any event the underlying issue should be determined on "a case-by-case basis" (*id.* at 15). There may be policy reasons for such a "flexible" approach to the principal place of business question, but that is for Congress to decide. Congress certainly has *not* adopted such an approach to date.

The Petition fully addresses the point that the statute requires a court to locate "the" principal place of business of a corporation in a diversity case. Respondents flatly contest that proposition (*see* Opp. at i, 4-8), and some of the cases they cite have adopted their view.[5] That issue

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[4] *See also* Opp. at 17, where Respondents refer to "the varying approaches" taken by the courts on this issue.

[5] Review of a few of the cases cited by Respondents in support of their proposition that "district courts routinely end the inquiry into diversity at the point where further analysis would yield no

alone deserves review by this Court, because such a conclusion is directly contrary to Congress's plain language. Moreover, the failure of the courts below to identify a single principal place of business makes clear the difficulty of applying the test they adopt. Suppose, for example, that Petitioner in all respects was located in Wyoming instead of Colorado. Would the trial court still claim it was unable to decide between Wyoming and Utah as Rocmount's locus? If not, what new test would it have to devise to accommodate the facts? And if it *could* decide between the two states, what explanation is there for why it has not done so here; in other words, what facts that are not already apparent would allow it to resolve the issue?

Respondents counter by arguing that courts can make "alternative findings of fact" (Opp. at 5-6). This is specious. A party, of course, can advance alternative theories to support its position, but a court's job is to make decisions—particularly when ordered to do so by Congress. It is impossible to reconcile the "alternative findings" argument with the statutory directive to find "the" principal place of business.

* * * *

The one test that not only conforms to the statute and its history but makes the most sense is the "nerve center" test. It works all the time, and it is simple to apply. The "total activity" test is confusing; when the facts complicate its application, it reverts to the "nerve center" equation.

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possible different result" (Opp. at 7), shows that the proposition is dubious. For example, the Seventh Circuit in *Casio, Inc.* v. *S.M. & R. Co., Inc.*, 755 F.2d 528, 530 (7th Cir. 1985), affirmed the district court's finding of diversity as not clearly erroneous, but suggested that the better course would have been to hold an evidentiary hearing on the principal place of business question. More striking is *Quaker State Dyeing & Finishing Co.* v. *ITT Terryphone Corp.*, 461 F.2d 1140, 1143 (3d Cir. 1972), where the court noted that "Terryphone's distinct principal place of business is to be determined."

In any event, two points are clear. First, the Tenth Circuit was patently wrong. For all of the reasons set forth in the Petition, Rocmount's "nerve center" is in Colorado, and because the AREU spans two states, its "nerve center" is its principal place of business. Second, all of this confusion—regardless of which test emerges—requires the attention of this Court. The relatively simple and direct language used by Congress has spawned a wide variety of interpretations and applications that can only be resolved here. The issue is a constantly recurring one; it will not go away on its own.

Respectfully submitted,

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